

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTONCITY OF SPOKANE, a municipal
corporation,

Plaintiff,

v.

CAWA CORP., a Delaware
corporation,

Defendant.

No. CV-10-0314-RHW

**ORDER GRANTING
PLAINTIFF'S MOTION
FOR VOLUNTARY
DISMISSAL**

Before the Court is the Plaintiff's Motion for Voluntary Dismissal Without Prejudice Pursuant to Rule 41, Fed. R. Civ. P., ECF No. 67. The motion was heard without oral argument.

Plaintiff asks the Court to dismiss the above-captioned action. Plaintiff asserts that the March 3, 2013 Ordinance C34963 renders much of the Complaint moot. Plaintiff asks the Court to dismiss this action for two reasons: (1) it is uncertain as to the extent to which the Court will exercise its discretion to address and resolve state law claims; and (2) it anticipates a state law land use petition act claim and will seek declaratory judgment in state court. Plaintiff maintains Defendant will not be prejudiced by dismissing this action.

In response, Defendant asks that the Court condition dismissal on the payment of attorney's fees. Here, the reasons for seeking a dismissal by the City do not justify the award of fees to Defendant and the Court declines to exercise its discretion to award fees. Plaintiff has not acted in bad faith; neither was this action a waste of time or resources. As such, the Court grants the City's request for

1 voluntary dismissal of its claims, but denies Defendant's request to condition the
2 dismissal on the payment of fees.

3 In its Motion for Voluntary Dismissal, Plaintiff asks the Court to also
4 dismiss the counterclaims filed by Defendant. Defendant objects and argues that
5 the voluntary dismissal should be limited to Plaintiff's causes of actions only. The
6 Court agrees. The proper procedure to seek dismissal of the Defendant's
7 counterclaims is to file a separate motion and memorandum supporting its request.
8 The Court denies any request to dismiss the Counterclaims, with leave to renew.
9 As such, the only remaining claims are those of the Defendant.

10 **Accordingly, IT IS HEREBY ORDERED:**

11 1. Plaintiff's Motion for Voluntary Dismissal, ECF No. 67 is **GRANTED**,
12 in part.

13 2. Plaintiff's claims asserted against Defendant are **dismissed**, without
14 prejudice.

15 3. The parties are directed to confer and file a joint status certificate
16 regarding the remaining claims as outlined in the scheduling order within 30 days
17 of the entry of this order.

18 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
19 Order and forward copies to counsel.

20 **DATED** this 30th day of September, 2013.

21
22 *s/Robert H. Whaley*
23 **ROBERT H. WHALEY**
United States District Judge

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